

LAST MINUTE MEMORANDUM

DATE: May 10, 2004
TO: MEMBERS, STATE BOARD OF EDUCATION
FROM: Sue Stickel, Deputy Superintendent
Curriculum and Instruction Branch
RE: Item No. 20
SUBJECT: Instructional Materials: Adopt Proposed Amendments to Title 5, Sections 9515 and 9517, and Addition of Section 9517.1 for Follow-up Adoptions

Background

At its March 2004 meeting, the State Board approved commencement of the rulemaking process for adopting proposed Title 5 Regulations for Follow-up Adoptions. The proposed regulations were made available for a 45-day public comment period that ended at 5:00 p.m. on May 10, 2004. A public hearing was held on May 10, 2004.

Report on Public Hearing

Consistent with the requirements of the Administrative Procedure Act, the public hearing regarding the proposed amendments was scheduled for Monday, May 10, 2004, at the California Department of Education, 1430 N Street, Room 1101, Sacramento, California, beginning at 1:00 p.m. An audiotape of the public hearing was made and is available for review.

The public hearing was called to order at 1:00 p.m. on the prescribed date and at the prescribed location. Ten persons provided comments at the public hearing. The public hearing was adjourned at 1:44 p.m.

Fifty-nine written comments were received during the public comment period that ended at 5:00 p.m. on Monday, May 10, 2004.

The comments have been summarized and responses provided to the Board in this memorandum.

Summary of Public Comments/Key Issues

The comments received did not address the proposed regulations or the rulemaking procedures followed and for that reason did not justify amendments to the proposed regulations.

Summary and response to comments received during the 45-day public comment period.

As of May 10, 2004, fifty-nine written comments were received and ten persons presented comments at the public hearing. None of the comments were directed at the proposed regulations or the rulemaking procedures followed. The content of the comments are summarized below.

Comment Regarding: English Language Development Materials

Fifty-eight of the fifty-nine written comments and all of the comments presented at the public hearing requested that the following language be added to the proposed regulations:

“If a school district has already adopted state approved English Language Arts materials, they are permitted to use their state follow-up adoption materials funds flexibly to purchase English Language Development materials that are aligned to the California ELD standards and have passed social and legal compliance”.

Response:

The proposed follow-up adoption regulations do not change the use of funding allocated to districts for instructional materials under the Instructional Materials Funding Realignment Program (IMFRP).

The 2002 Reading/Language Arts/English Language Development Adoption list has a Reading Intervention Program for English Learners that can be purchased with IMFRP funds. In addition, once districts have certified that they have provided all students in kindergarten through grade twelve with standards-aligned materials in the four core subjects pursuant to *Education Code* Section 60422, and have met the sufficiency requirement in *Education Code* Section 60119, they can use remaining IMFRP funds to purchase additional English Language Development materials that are not on the State adopted list.

Also, the follow-up adoption process and collection of publisher fees will permit publishers to submit programs not currently on the State Board adopted lists. However, any programs submitted for follow-up adoption must adhere to the same evaluation criteria as used in the primary adoption of that subject matter.

Comment Regarding: Written Notice of Follow-up Adoption

One of the presenters at the public hearing requested that additional language be added to Section 9517.1(a) of the proposed regulations to make the language for written notification of follow-up adoptions consistent with the written notification of primary adoptions in Section 9517.

Response:

These regulations already contain a proposed amendment to Section 9517 to change the language to include the same written notification for both primary and follow-up adoptions.

Comment Regarding: Adoption Cycle

One comment expressed concerns regarding *Education Code* Section 60200(b)(1) and the way the adoption cycle is determined as a result. The current adoption cycle schedule calls for adoption of the four core subjects over the next four years, History-Social Science in 2005, Science in 2006, Mathematics in 2007 and Reading/Language Arts in 2008. The concern expressed that this cycle was self defeating for a number of reasons:

- The process of materials selection, piloting, adoption, purchase and training, for a major subject area cannot be accomplished within the confines of one school year, especially where there are no staff development days and may not be buy back days.
- The cost of a major adoption in any of the these areas is generally more than the allocations that come from the CDE, thus requiring a district to build a financial reserve prior to a major adoption.

Response:

The purpose of the regulations is to establish the process for follow-up adoptions and the fee to be paid by publishers and manufacturers for participation in follow-up adoptions of instructional materials for grades K-8, not the schedule of primary adoptions. Changes to *Education Code* Section 60200(b)(1) would require Legislative action and approval of the Governor.

Staff Recommendation

Recommend that the State Board adopt the regulations with no changes and direct staff to complete the rulemaking file and submit it to the Office of Administrative Law.

Attachments

[Attachment 1](#): Final Statement of Reasons (2 Pages)

FINAL STATEMENT OF REASONS

UPDATE OF INITIAL STATEMENT OF REASONS

SECTIONS 9515, 9517 AND 9517.1

During the 45-day public comment period ending May 10, 2004, fifty-nine written comments were received and ten persons presented comments at the public hearing for the proposed amendments to Sections 9515 and 9517 of and addition of 9517.1 to the *California Code of Regulations*. The purpose of these regulations is to establish the process for follow-up adoptions and the fee to be paid by publishers and manufacturers for participation in follow-up adoptions of instructional materials for grades K-8. The comments received did not address the proposed regulations or the rulemaking procedures followed and for that reason did not justify amendments to the proposed regulations.

The content of the comments are summarized below.

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Also, the follow-up adoption process and collection of publisher fees will permit publishers to submit programs not currently on the State Board adopted lists. However, any programs submitted for follow-up adoption must adhere to the same evaluation criteria as used in the primary adoption of that subject matter.

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ALTERNATIVES DETERMINATION

The State Board has determined that no alternative would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

LOCAL MANDATE DETERMINATION

The proposed regulations do not impose any mandate on local agencies or school districts.